

**Letter of Findings Number: 09-0951P  
Withholding Tax-Penalty  
For the Periods June 2009 and July 2009**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is a corporation doing business in Indiana. Taxpayer hired a third-party payroll company to handle its employee withholding tax duties. That payroll company was acquired by a second payroll company.

When the second payroll company assumed Taxpayer's employee withholding tax duties, the payroll company made the monthly payments for March through July on the thirtieth (30<sup>th</sup>) day of the following month; however, the payments were actually due on the twentieth (20<sup>th</sup>) day of the following month. Because Taxpayer remitted its monthly employee withholding tax after the statutory deadline, the Indiana Department of Revenue ("Department") assessed penalties on each late tax payment. Taxpayer protested the penalty.

After filing its protest, the Department waived the penalties assessed for March, April, and May 2009. The Department did not waive June or July 2009 penalties.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

**I. Tax Administration–Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to remit its monthly employee withholding taxes in a timely manner.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer hired an agent—a payroll company—to handle its employee withholding tax duties for the periods in question. The payroll company presumably was hired because of its expertise in managing employee withholding tax. The Department waived the first three months' penalty assessments. The payroll company first established Taxpayer's account on March 6, 2009. Before the first penalty in this protest, the payroll company had four

months and fourteen days to correct its system to reflect the correct due date. The payroll company—whose very job it is to manage Taxpayer's account—failed to correct the due date for employee withholding tax payments for six months. As an agent of Taxpayer, the payroll company's actions are imputed to Taxpayer. The payroll company—and by extension Taxpayer—has not established reasonable cause to justify penalty waiver.

**FINDING**

Taxpayer's protest is denied for the June 2009 and July 2009 periods.

*Posted: 04/28/2010 by Legislative Services Agency*

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